

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN THE MATTER OF

X

:

**BLANCA GARCIA,
DEBTOR**

: **CHAPTER 13**
: **CASE NO: 09-22229 (ash)**
:
: **APPLICATION**

: **COURT DATE:**
April 15, 2009 9:30 AM

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**APPLICATION TO ALLOW MAINTAINENCE OF BANK ACCOUNT
DESIGNATED FOR MORTGAGE, PROPERTY TAXES AND
HOMEOWNERS INSURANCE**

Blanca Garcia, the above named chapter 13 debtor, by and through her attorney of record, Linda M. Tirelli, respectfully presents this “Application to Allow Maintenance of Separate Bank Account for Mortgage Funds” and moves the Court to provide relief requested herein below and and further states the following:

1. That the debtor filed for bankruptcy protection on February 19, 2009 and a 341 Meeting of Creditors was held on April 2, 2009 by the assigned Chapter 13 Trustee, Jeffrey Sapir, Esq.
2. That on March 6, 2009, a Proof of Claim was filed seeking payment on behalf of an entity identified as “HOME LOAN SERVICES, INC.” (hereinafter referred to as “HLSI”) listing basis of claim as “money loaned” and secured by “a mortgage” with no supporting documentation identifying the claim, the claimant, its agency status (if any), or its relationship to the debtor. Said proof of claim appears in the Courts ECF System Claims Register as claim #1; (See attached Exhibit “A”)
3. That Debtor filed a timely objection to HLSI’s Proof of Claim on March 19, 2009 and the same is scheduled to be heard before the Court on April 15th, 2009 at 9:30AM;
4. That Debtor is the owner of real estate known as 96 Waller Avenue, White Plains, New York. (hereinafter referred to as “Waller Avenue”)
5. That since filing her petition and in accordance with her proposed plan, Debtor desires and intends to stay current on her mortgage payment obligations and escrow fund for the associated property taxes and homeowners insurance.

6. That prior to filing her Chapter 13 Petition, Debtor was named as a defendant in a foreclosure action, pertaining to the Waller Avenue property, filed on December 10, 2007 with the NYS SUPREME COURT, WESTCHESTER COUNTY bearing INDEX # 07-25079 which identifies the Plaintiff as “Deutsche Bank National Trust Company , as Trustee for First Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass Through Certificates, Series 2006-FF9.” (hereinafter referred to as “the Foreclosure Action”)
7. The foreclosure action seeks relief and damages based on an alleged secured debt pertaining to debtor’s real estate located at 96 Waller Avenue in White Plains, New York.
8. Debtor filed for bankruptcy protection on February 19, 2009 and notice provided via fax and First Class US Mail and acknowledged as received by the attorney of record (namely Viji L. Sritharan, Esq., c/o Doonan Graves & Longoria, 100 Cummings Center, Ste. 225D, Beverly, MA 01915) for the plaintiff “Deutsche Bank National Trust Company , as Trustee for First Franklin Mortgage Loan Trust 2006-FF9, Mortgage Pass Through Certificates, Series 2006-FF9” (copy attached hereto as Exhibit “B.”)
9. Debtor’s petition lists a potential, but disputed claim, by yet a third entity named as an alleged secured creditor ie., “First Franklin Loan Services” believed to be located in Pittsburgh, Pennsylvania, pertaining to Debtors property located at 96 Waller Street, White Plains, New York.
10. At no time was Debtor or her Attorney provided with notification of a change of servicer, assignment, agent and/or any other such designation of succession as might otherwise be required pursuant to 12 USC §2605 (b).
11. Debtor and her Attorney perceive an apparent and real discrepancy as to which of the potential three parties is the appropriate party (ie, Home Loan Services, Inc., Deutsche Bank National Trust Company, or First Franklin Loan Services) to which debtor’s mortgage payment should properly be paid and entrusted.
12. That debtor through her attorney did consult with the Chapter 13 Trustee, Jeffrey Sapir, on March 23, 2009, for advisement as to how to handle the mortgage payment under the circumstances of not knowing which party to pay. At the advice of the Trustee, the Debtor opened and deposited the mortgage , tax and insurance funds in total sum of FIVE THOUSAND TWO HUNDRED EIGHTEEN AND 89/100 (\$5218.89) DOLLARS into an interest bearing account with Key Bank located at 27 Bank Street in White Plains, NY 10606 bearing account number 324897001628 (Copies of receipt of deposit is attached hereto as Exhibit “C.”) and has further filed the instant application asking the Court to allow the same as an interim solution on an ongoing basis

13. That the deposited amount represents sufficient funds to cover anticipated regular monthly payments of principle and interest as well as the costs associated with property taxes and insurance on Debtor's property located at 96 Waller Avenue, in White Plains, New York.
14. That the debtor did present the Trustee with proof of the established bank account and proof of deposit immediately thereafter.
15. As a practical matter and in anticipation of a continued dispute over the proper party to which Debtor might owe and/or should make a monthly mortgage payment, the Debtor hereby seeks relief, via application, by way of the Courts permission and approval to continue to deposit the amount described into said account until such time as the real party in interest is identified to the satisfaction of the Court and the Court has further determined the appropriate party any and all funds are owed.
16. Debtor further agrees to submit monthly statements and proof of deposit to the Chapter 13 Trustee and any and all parties the Court should deem appropriate and so require.

WHEREFORE, the debtor further prays of the Court as follows:

That the Court allow the Debtor to

- A. Continue to make regular monthly deposits in the amount of FIVE THOUSAND TWO HUNDRED EIGHTEEN AND 89/100 (\$5218.89) DOLLARS in to a separate designated bank account with Key Bank located at 27 Bank Street in White Plains, NY 10606 bearing account number 324897001628; and
- B. That the Court allow Debtor to continue to provide the Chapter 13 Trustee with proof of such deposits and copies of any and all statements pertaining to said account on regular monthly basis; and

WHEREFORE, That the debtor have such other and further relief as the Court may deem just and proper.

This the 8th day of April, 2009.

Linda M. Tirelli, Esq. , Debtor's Counsel
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601
Phone: (914)946-0860 / Fax: (914)946-0870
Primary Email: WestchesterLegal@aol.com

CERTIFICATE OF SERVICE

I, Linda M. Tirelli, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing "Application for Court Order For the Maintenance of Separate Bank Account for Mortgage Funds" on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Home Loan Services, Inc.
150 Allegheny Center Mall
Pittsburgh, PA 15212

Amy E. Przewozny, Esq.
c/o Steven J. Baum, PC
220 Northpointe Parkway, Suite G
Amherst, NY 14228

Deutsche Bank National Trust Company ,
as Trustee for First Franklin Mortgage
Loan Trust 2006-FF9,
Mortgage Pass Through Certificates, Series 2006-FF9
Attn: Legal Department
60 Wall Street
New York, NY 10005

First Franklin Loan Services
PO Box 1838
Pittsburgh, PA 15230-1838

And via the Court's Electronic Case Filing System to:
Attorney For Creditor:
Amy E. Przewozny, Esq.
c/o Steven J. Baum, PC
220 Northpointe Parkway, Suite G
Amherst, NY 14228

Jeffrey L. Sapir, Esq.
Chapter 13 Trustee
300 Knollwood Road, Suite 102
White Plains, NY 10603

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

5. Service as outlined herein was made within the United States of America.

This the 8th day of April, 2009.

/s/ Linda M. Tirelli

Debtor's Counsel
Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601
Phone: (914)946-0860 / Fax: (914)946-0870
Primary Email: WestchesterLegal@aol.com

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF

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**BLANCA GARCIA,
DEBTOR**

: CHAPTER 13
: CASE NO: 09-22229 (ash)
:
: COURT DATE: Wednesday
----- X April 15, 2009 at 9:30AM

**Order For the Maintenance of Separate Bank Account
for Debtor's Mortgage Funds**

THIS CAUSE coming on to be heard, and being heard, before the undersigned Honorable Adlai S. Hardin, Judge of the United States Bankruptcy Court for the Southern District of New York, and

IT APPEARING to the undersigned that this court has jurisdiction over the parties and over the subject matter of this Application for an Order; and

IT FURTHER APPEARING to the undersigned that all parties in interest received notice of this objection and of the time, date and place of this hearing and that no such parties have filed any timely objections or otherwise appeared in opposition to the said Application and that the time for filing any such objection has expired; and

IT FURTHER APPEARING to the undersigned that the relief requested by the debtor in her application is consistent with the applicable provisions of Title 11 of the United States Code and that the debtor has established good and sufficient cause to grant said relief; and **IT IS THEREFORE SO**

ORDERED that Debtor shall deposit at regular monthly intervals the sum of FIVE THOUSAND TWO HUNDRED EIGHTEEN AND 89/100 (\$5218.89) DOLLARS in to a separate designated bank account with Key Bank located at 27 Bank Street in White Plains, NY 10606 bearing account number 324897001628; and **IT IS THEREFORE SO FURTHER**

ORDERED that the Debtor shall continue to provide the Chapter 13 Trustee with proof of such deposits and copies of any and all statements pertaining to said account on regular monthly basis; and **IT IS THEREFORE SO FURTHER**

ORDERED that

HONORABLE ADLAI S. HARDIN,
BANKRUPTCY JUDGE

DATE

CERTIFICATE OF SERVICE

I, Linda M. Tirelli, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing "Order For the Maintenance of Separate Bank Account for Debtor's Mortgage Funds" on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

Home Loan Services, Inc.
150 Allegheny Center Mall
Pittsburgh, PA 15212

Amy E. Przewozny, Esq.
c/o Steven J. Baum, PC
220 Northpointe Parkway, Suite G
Amherst, NY 14228

Deutsche Bank National Trust Company ,
as Trustee for First Franklin Mortgage
Loan Trust 2006-FF9,
Mortgage Pass Through Certificates, Series 2006-FF9
Attn: Legal Department
60 Wall Street
New York, NY 10005

First Franklin Loan Services
PO Box 1838
Pittsburgh, PA 15230-1838

And via the Court's Electronic Case Filing System to:

Attorney For Creditor:
Amy E. Przewozny, Esq.
c/o Steven J. Baum, PC
220 Northpointe Parkway, Suite G
Amherst, NY 14228

Jeffrey L. Sapir, Esq.
Chapter 13 Trustee
300 Knollwood Road

Suite 102
White Plains, NY 10603

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;
5. Service as outlined herein was made within the United States of America.

This the 8th day of April, 2009.

/s/ Linda M. Tirelli

Debtor's Counsel
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